



FAIR POLITICAL PRACTICES COMMISSION

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To: Vice Chair Eskovitz and Commissioners Casher, Wasserman and Wynne

From: Erin V. Peth, Executive Director
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Subject: Legislative Update

Date: February 20, 2014

This report includes a summary of bills currently pending before the Legislature that would impact the Political Reform Act (the "Act"). Since the last report SB 831 (Hill) and SB 844 (Pavley) have been introduced and SB 268 (Gaines) and SB 477 (Steinberg) have been removed from this report because they no longer impact the Act. There may be additional bills introduced this year that would impact the Act. If so, staff will notify the Commission and may bring recommendations on these new proposals to the Commission in the coming months.

Commission Sponsored Bills

SB 27 (Correa)

Existing Law

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures. Regulations previously adopted by the Commission require nonprofit organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years.

The Act also requires a candidate or a committee that receives contributions of \$5,000 or more from any person to inform the contributor within two weeks that he or she may be subject to the Act's reporting requirements as a major donor.

Proposed Law

This bill would require multipurpose organizations that meet specified criteria to comply with the registration and campaign reporting requirements of the Act, including disclosure of information relating to the organization's donors. The bill would create a definition for the term multipurpose organization under the Act and a multipurpose organization would qualify as a recipient committee and have to disclose its donors if:

- (1) It is a federal or out of state political action committee that makes contributions or expenditures on California candidates or measures of \$1,000 or more.
- (2) It solicits and receives contributions from donors for the purpose of making contributions or expenditures on California candidates or measures.
- (3) It makes contributions or expenditures of \$50,000 or more in a 12 month period or makes contributions or expenditures of \$100,000 in a four-year period. Such a multipurpose organization that makes contributions or expenditures from nondonor funds (investment income, earned income, sale of assets, etc.) would not be required to disclose donors.

A donor identified and reported by a multipurpose organization as a source of funds that is also a multipurpose organization that receives contributions would be required to disclose its donors as well. Also, a donor who has specified that their donation shall not be used to make contributions or expenditures would not be required to be disclosed.

In addition to the existing major donor notice requirements, this bill would require that a candidate or committee notify a contributor within one week of making a contribution of \$10,000 or more during the late contribution reporting period that they are subject to the Act's reporting requirements. The bill would also require the notifications to reference the reporting requirements for multipurpose organizations.

This bill would also require ballot measure committees and candidate committees that raise \$1,000,000 or more for an election to maintain an accurate list of the committee's top 10 contributors, which would be posted on the FPPC's Internet website and the Committee's Internet website.

The amendments proposed by this bill will result in more timely and accurate disclosure of the identity of the actual source of funds being spent on California elections, rather than just the name of a multipurpose organization which often provides little, and sometimes misleading, information about the interest behind the expenditure. This bill would increase accountability for those who attempt to avoid disclosure of their identities by channeling funds used to influence California elections through other committees or nonprofits.

The most recent substantive amendments to this bill create direct, bright-line reporting requirements for multipurpose organizations whose primary activity is not making contributions or expenditures, but who ultimately do so with donor funds. As amended, this bill no longer contains the presumptions in the previous version or the so-called "first bite of the apple" exception of current law, but sets contribution and expenditure thresholds that trigger the duty to

report the source of funds used. The goal is still to increase disclosure by these organizations through more clear requirements.

The Supreme Court has repeatedly held that the identity of the source of funds spent on elections provides valuable information to voters, and staff believes that timely pre-election disclosure of such information increases its value to voters when it matters most.

This bill has been amended to include an urgency clause so that its provisions would become operative on July 1, 2014.

Status: Assembly Floor.

Commission Adopted Position: Sponsor.

Fiscal Impact: Minor and absorbable. (\$10,000)

AB 914 (Gordon)

Existing Law

The Act provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures by nonprofit organizations, and imposes other reporting and recordkeeping requirements on campaign committees. Regulations previously adopted by the Commission require nonprofit organizations such as charities (501(c)(3)) and social welfare organizations (501(c)(4)) to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization's intent to use such funds to make campaign contributions or expenditures or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years, in California.

Proposed Law

This bill would require nonprofit organizations that make campaign contributions, expenditures or independent expenditures in California to file an annual report with the Commission, disclosing the total percentage of their funds that were used to make contributions, expenditures and independent expenditures during each fiscal year the entity spends at least \$50,000 on such activities. If the total amount spent on such activities exceeds 10 percent of the entity's total expenses during the fiscal year, the entity would be required to disclose information related to each contribution, expenditure and independent expenditure, including the amount, date, name and address of the recipient, and a description of the purpose for the contribution, expenditure or independent expenditure. The names of each donor to the nonprofit organization of \$10,000 or more would also have to be disclosed, unless the organization makes all of its campaign expenditures from a separate account used for political expenditures. If all campaign contributions, expenditures and independent expenditures are made from a separate account, only donors whose funds were deposited into the separate account would be required to be disclosed. The bill would allow exemptions from disclosing the identities of donors in limited circumstances.

Staff believes this bill would provide the public with much needed disclosure that in some cases can be nonexistent. Since the Supreme Court decided *Citizens United* in 2010, there has been an unprecedented amount of campaign activity conducted by nonprofit organizations. Many of these organizations receive large sums of money from individuals and corporations and, under Federal law, are not required to disclose their donors. In the last election, a nonprofit organization contributed a large sum of money, which it apparently obtained from a number of other nonprofit organizations, to a committee in California prior to the election for use on ballot measure campaigns. Only the nonprofit in California was disclosed as the source of the funds. The FPPC brought legal action against them seeking to obtain the true source of the funds. This occurred just a few days before the election. This legislation would simply require nonprofits to know who their donors are and to disclose who is actually funding their campaign activities. This basic disclosure also would provide the public and other government agencies with valuable information regarding the amount of campaign activity conducted by the nonprofit in relation to its activities as a whole.

Status: Senate Inactive File.

Commission Adopted Position: Sponsor.

Fiscal Impact: Minor and absorbable.

Commission Supported Bills

SB 2 (Lieu and Yee)

Existing Law

The Act provides for the comprehensive regulation of campaign financing by requiring the reporting of campaign contributions and expenditures, and imposing other reporting and recordkeeping requirements on campaign committees.

The Act also regulates advertisements, which are defined as any general or public advertisement that is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure. The Act places certain disclosure requirements on advertisements for or against any ballot measure, including that the advertisement disclose up to two persons who have made cumulative contributions of \$50,000 or more. The Act places more specific disclosure requirements on broadcast or mass mailing advertisements that are paid for by independent expenditures that support or oppose a candidate or ballot measure. In addition to other penalties imposed by the Act, a fine of up to triple the amount of the cost of an advertisement can be imposed on a person who violates the disclosure requirements for advertisements.

The Act regulates mass mailings, known as slate mailers that support or oppose multiple candidates or ballot measures for an election. The Act requires that each slate mailer identify the slate mailer organization, or committee primarily formed to support or oppose one or more ballot measures, that is sending the slate mailer. Slate mailers must contain other specified information

in specified formatting. The Act requires that each candidate and each ballot measure proponent that has paid to appear in the slate mailer be designated by an asterisk.

Proposed Law

This bill would require that television, video, or audio broadcast advertisements that are authorized by a candidate include a specified disclosure statement made by the candidate. The bill would increase the maximum penalty for a violation of the advertisement provisions to six times the amount of the costs of the advertisement. The bill would also increase fine ceilings for other violations of the Act.

This bill would require that a candidate or ballot measure appearing in a slate mailer as a result of a payment made by a third party be designated by an “@” and would require the notice to voters included on a slate mailer be revised to describe this new requirement.

This bill would require that a slate mailer that is produced in a language other than English provide the required notice to voters in that same language. The bill would require that a slate mailer provide the notice in both English and another language if a substantial portion of a slate mailer is produced in the other language.

This bill would reduce the amount of time within which a ballot measure committee must reference itself as a committee for or against a numbered proposition to within ten days of the designation of the numerical order of propositions by the Secretary of State.

Previously, staff recommended the Commission support this bill if the audit provisions were amended in a way that did not conflict with audit language in AB 800 because the bill’s other provisions further the purposes of the Act by requiring that candidates make disclosure statements on their own advertisements and increasing disclosure on slate mailers by informing voters when a third party has paid for a candidate or ballot measure to appear on a slate mailer. Staff recommended the Commission support this bill if amended, and the bill has been amended to reflect staff’s concerns. The Commission adopted staff’s recommendation at its June 2013 meeting.

Status: Assembly Inactive File.

Staff Recommended Position: Support.

Fiscal Impact: Minor and absorbable.

SB 26 (Correa)

Existing Law

The Act regulates mass mailings known as slate mailers that support or oppose multiple candidates or ballot measures for an election. The Act requires that each slate mailer identify the slate mailer organization, or committee primarily formed to support or oppose one or more ballot measures, that is sending the slate mailer, and to contain other information in specified

formatting. The Act also requires a notice to voters in a specified type and color or print consisting of a prescribed statement included on a side or surface of the slate mailer.

Proposed Law

This bill would change the font size for slate mailer name, street address, city, and disclaimer from 8pt. to 10 pt. These items would be required to be written in black ink against a solid white background. The disclaimer would be required to appear on each side or surface where any candidate or ballot measure has paid to appear, instead of the top or bottom of the front side or surface of a postcard mailer or insert.

Staff believes that this bill will provide greater disclosure to the public by making important information about the identity of the organization sending the mailer and whether a candidate or ballot measure has paid to appear in the mailer more noticeable and readable for the recipients.

Status: Assembly Elections and Redistricting.

Staff Recommended Position: Support.

Fiscal Impact: Minor and absorbable.

AB 45 (Dickinson)

Existing Law

The Act currently defines a “committee” as any person or combination of persons who receive contributions or make independent expenditures of \$1,000 or more in a calendar year. The Act requires committees to file campaign statements and requires that those statements disclose certain information about contributors who have made aggregate contributions of \$100 or more.

Regulations previously adopted by the Commission require nonprofit organizations to disclose the sources of funds behind their campaign expenditures when donors have made donations to the organization in response to a solicitation that indicates the organization’s intent to use such funds to make contributions or expenditures, or when such organizations have previously made contributions or independent expenditures from their general treasuries of \$1,000 or more during the calendar year, or the previous four years.

The Act currently defines the term “candidate” as including an officeholder who is the subject of a recall election. A candidate retains that status until the status is terminated. Candidate status requires individuals to continue to file campaign reports and provide disclosure to the public on campaign activities for both their main committee and other committees with which they may be involved. Candidates are prohibited from controlling committees that make independent expenditures and are prohibited from making contributions to committees that make independent expenditures to support or oppose other candidates. By regulation, the Commission has said that a candidate retains his or her status as a candidate until he or she leaves office.

The Act also imposes specified duties on a filing officer with respect to reports and statements filed with that filing officer. The Act requires that certain campaign statements be filed with the

Secretary of State online or electronically. Statements that are filed electronically must also be filed in paper format.

Proposed Law

In its current form, this bill would increase the monetary threshold of contributions or independent expenditures that qualify a person or combination of persons as a committee from \$1,000 to \$2,000.

The bill would authorize the Commission to adopt regulations establishing reporting thresholds for disclosure of contributions and expenditures for a committee primarily formed to support or oppose a statewide ballot measure to a minimum of \$500 and a maximum of \$2,500.

The bill would revise the definition of “contribution” to include payments made to multipurpose organizations by a person who “knows or has reason to know” that a payment will be used to make a contribution or independent expenditure. The bill would impose a presumption that a donor has “reason to know” (a) if the recipient organization has made aggregate contributions or expenditures of \$2,000 or more within the calendar year, or the preceding four years, or (b) if the donor’s payment is \$50,000 or more, is made in the six months preceding the election, and the multipurpose organization makes a contribution or an independent expenditure of \$50,000 or more within the six months prior to the election. Such donors would have to be identified and reported by the organization in accordance with existing reporting regulations.

This bill would revise the definition of “candidate” to include any officeholder, regardless of whether he or she is the subject of a recall election, and provides that a candidate retains that status until the time that he or she leaves office and the status is terminated. This change will make clear that officeholders who terminate their campaign committees will continue to retain their status as a candidate until they actually leave office, so that while they remain in office they are prohibited from controlling committees that make independent expenditures and prohibited from making contributions to committees that make independent expenditures to support or oppose other candidates.

Staff is currently working with the author of this bill and the author of SB 27 to harmonize the provisions relating to disclosure by multi-purpose organizations to ensure consistency.

Additionally, the bill would require filing officers to immediately affix a date stamp to each statement of economic interest. The bill would also require the Secretary of State to make campaign and lobbying statements and reports that are filed with the Secretary of State available to the Commission upon request.

The bill would specify that the Commission is authorized to seek an injunction to prevent a violation of the Act or compel compliance with the Act.

Status: Senate Elections & Constitutional Amendments.

Commission Adopted Position: Support.

Fiscal Impact: Minor and absorbable.

AB 800 (Gordon)

Existing Law

The Act prohibits an agent or independent contractor from making an expenditure of \$500 or more, other than overhead or normal operating expenses, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The Act requires an agent or independent contractor to make known to the candidate or committee all information subject to this reporting requirement, but does not specifically require the same for a subagent or subcontractor.

“Surplus campaign funds” are defined in the Act as funds that are under the control of a former candidate or former elected officer as of the date of leaving office, or the end of the postelection reporting period following the defeat of the candidate for elective office, whichever occurs last. The purposes for which surplus campaign funds may be used are restricted.

The Act requires the Franchise Tax Board (the “FTB”), to periodically prepare reports regarding its audit and investigations under the Act and send them to the Commission, the Secretary of State and the Attorney General. These audit reports must be completed within one year.

The Act generally prohibits the commencement of an audit or investigation of a candidate, controlled committee, or committee primarily supporting or opposing a candidate or a measure in connection with a report or statement required by specified provisions of the Act until after the last date for filing the first report or statement following the general, the runoff, or a special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated.

Proposed Law

This bill would require a subcontractor who provides goods or services to or for the benefit of a candidate or committee to make known to the agent or independent contractor all of the information subject to the reporting requirements of the Act and would require this information be disclosed by a subagent or independent contractor to the agent, independent contractor, candidate, or committee no later than three working days prior to the time the campaign statement reporting the expenditure is required to be filed. Late contributions or late independent expenditures must be reported to the candidate or committee within 24 hours of the time it is made.

This bill would increase the time at which campaign funds become surplus by 90 days following either the officer leaving elective office or the end of the postelection reporting period following the defeat of the candidate, whichever occurs last.

This bill would extend one-year deadline for the FTB to complete audit reports for audits conducted on a random basis to two years, and would allow the Commission and the FTB (at the direction of the Commission), to audit any record required to be maintained under the Act in

order to ensure compliance with the Act prior to an election, even if the record or report is one that has not yet been filed. The one-year deadline has proven counter-productive as it forces the FTB to work on minor audits and not have the discretion to adjust their workload to more rapidly work on major issues.

Finally, the bill would authorize the Commission to seek injunctive relief in a superior court to compel disclosure consistent with the Act and require a court grant expedited review of an action filed pursuant to this provision.

This bill has been amended to include an urgency clause so that its provisions would become operative on July 1, 2014.

Status: Senate Floor.

Commission Adopted Position: Support.

Fiscal Impact: Minor and absorbable.

Bills with No Position Taken

SB 52 (Leno and Hill)

Existing Law

The Act regulates advertisements, which are defined as any general or public advertisement that is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure. The Act places certain disclosure requirements on advertisements for or against any ballot measure, including that the advertisement disclose up to two persons who have made cumulative contributions of \$50,000 or more. The Act places more specific disclosure requirements on broadcast or mass mailing advertisements that are paid for by independent expenditures that support or oppose a candidate or ballot measure. In addition to other penalties imposed by the Act, a fine of up to triple the amount of the cost of an advertisement can be imposed on a person who violates the disclosure requirements for advertisements.

The Act requires a person who makes a payment or promise of payment totaling \$50,000 or more for a communication that identifies, but does not advocate the election or defeat of, a candidate for elective state office, and that is disseminated within 45 days of an election, to file an online or electronic disclosure report with the Secretary of State within 48 hours.

Proposed Law

This bill would define “Advertisement” to include electioneering communications and issue advocacy advertisements.

The bill would define “issue advocacy advertisement” as an advertisement that clearly refers to and reflects a view on the subject matter, description, or name of a pending legislative action, administrative action, or one or more ballot measures and does any of the following:

- (1) Can only be interpreted as an appeal for the recipient of the advertisement to take action by contacting an employee or elected official of the state government or any local government or encouraging others to contact those persons.
- (2) Refers to a pending legislative action and is disseminated, broadcast, or otherwise communicated within 60 days of the end of the legislative session.
- (3) Refers to one or more ballot measures and is disseminated, broadcast, or otherwise communicated within the 120 days of the election concerning that measure or measures.

The bill would impose new disclosure statement requirements for:

- (1) Radio advertisements and prerecorded telephonic messages – these advertisements would be required to have a disclosure at the end of the advertisement that states the committee’s name and the three largest contributors for the advertisement that have met or exceeded a disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures unless they are already identified in the advertisement.
- (2) Television or video advertisements – these advertisements would be required to have a disclosure at the beginning of the advertisement on a solid black background that covers the entire bottom one-third of the display for a minimum of six seconds listing the three largest contributors who have met or exceeded a disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures along with a website address to the committee’s Internet Disclosure Website and committee name.
- (3) Print advertisements other than slate mailers – these advertisements would be required to have a disclosure area on the largest page of the mass mailing or print advertisement that has a solid white background with black writing in a box that discloses the top three funders of the ad that have met or exceeded a disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures. If the advertisement is four inches tall or less, only the top two contributors must be disclosed and if the advertisement is three inches tall or less, only the top funder would be required to be disclosed on the advertisement. A link to an Internet Disclosure Website and the committee’s name would also be required.

The bill will require committees that have received contributions meeting or exceeding the disclosure threshold of \$10,000 or more for statewide candidates or measurers or \$2,000 or more for local candidates or measures to maintain an Internet Disclosure Website that lists the Committees top 10 donors, and that also have a link to a page with all of the committees donors who have met or exceeded the disclosure thresholds.

The bill would provide authority to the Commission to promulgate regulations to require disclosures on all forms of political advertisements including electronic media advertisements and billboards.

The bill would require a person who makes a payment or promise of payment of \$10,000 or more for a communication that identifies but does not expressly advocate the election or defeat of a candidate for elective state office that is disseminated between 120 days before the primary or special election and the date of the general or run-off election to file an online or electronic report with the Secretary of State within 48 hours.

Further amendments to this bill are expected.

Status: Assembly Elections & Redistricting.

Fiscal Impact: \$363,000.

SB 831 (Hill)

Existing Law

Under the Act, a payment made at the behest of a candidate for elective office is considered a contribution unless the payment is made for purposes unrelated to the candidate's candidacy. A payment is presumed to be unrelated to a candidate's candidacy if it is made principally for legislative, governmental, or charitable purposes. Payments principally for legislative, governmental, or charitable purposes made at the behest of a candidate who is an elected officer must be reported within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made.

The Act prohibits specified officers from receiving gifts, as defined, in excess of \$440 in value from a single source in a calendar year. The Act exempts gift payments for the actual costs of specified types of travel that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy from the annual limit on the value of gifts from a single source.

The Act requires that contributions deposited into a campaign account be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. Expenditures must be reasonably related to a political purpose when associated with election of the candidate and must reasonably relate to a legislative or governmental purpose when associated with holding office. Expenditures which confer a substantial personal benefit must be directly related to a political, legislative, or governmental purpose. The Act authorizes the use of campaign funds to make donations or loans to bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organizations. The Act imposes additional limitations on certain expenditures, including those relating to automotive expenses, travel expenses, tickets for entertainment or sporting events, personal gifts, and real property expenses.

Proposed Law

This bill would reduce the reporting threshold for a behested payment to \$2,500 from \$5,000. The bill would also require the Fair Political Practices Commission to post certain behested

payment reports on its website within 30 days of receipt of the report. The bill would prohibit an elected officer from requesting that a payment be made, or a person from making a payment, at the behest of the elected officer to a business entity or nonprofit organization owned or controlled by specified persons, including that officer, any other elected officer who serves on the same elective body as the behesting officer and family members of elective officers serving on that elective body.

This bill would impose an annual limit on gift payments from a single source for gifts of travel that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy at \$5,000.

The bill would prohibit an elected officer or a committee controlled by the elected officer from making an expenditure of campaign funds to a business entity or nonprofit organization owned or controlled by the officer, any other elected officer who serves on the same elective body, or family members of elective officers serving on that elective body, as specified.

This bill would also limit the expenditure of campaign funds for specific items such as country club memberships, household food items, tuition payments, and payments to a health club or recreational facility.

Status: Introduced

Fiscal Impact: None yet completed.

SB 844 (Pavley)

Existing Law

Each campaign committee formed or existing primarily to support or oppose a statewide ballot measure is required to file with the Secretary of State periodic reports identifying the sources and amounts of contributions received during specified periods. Existing law, including the Act, also specifies information required to be included in the statewide ballot pamphlet for each statewide ballot measure to be voted upon.

Proposed Law

This bill would require the Secretary of State to post on his or her Internet Web site, for each statewide ballot measure, a list of the 10 highest contributors of \$50,000 or more who have made the largest cumulative amount of contributions to campaign committees formed or existing primarily to support or oppose that ballot measure. The bill would require the Secretary of State to update each list of contributors at specified intervals up until 2 business days before the election and to post a final version of each list by a specified date after the election. In addition, the bill would require the statewide ballot pamphlet to include a printed statement that refers voters to the Secretary of State's website for the above-described lists of contributors.

Status: Introduced

Fiscal Impact: None yet completed.

AB 510 (Ammiano)

Existing Law

The Act currently requires a committee that makes an expenditure of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose the qualification, passage, or defeat of a ballot measure to file a report within ten days, and to include a statement in the advertisement that notifies viewers that the individual was paid to appear in the advertisement.

Proposed Law

This bill would require the same reporting and disclosure when a committee makes an expenditure of any amount to an individual that appears in the advertisement if the advertisements state that the individual is a practitioner or a member of a profession having expertise or specialized knowledge relating to the subject of the measure.

Status: Senate Rules.

Fiscal Impact: Minor and absorbable.